

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)	
OF XO DELAWARE, INC., FOR)	
APPROVAL TO REDUCE ITS BONDING)	PSC DOCKET NO. 04-72
REQUIREMENT TO \$10,000)	
(FILED FEBRUARY 25, 2004))	

FINDINGS AND ORDER NO. 6376

This 16th day of March, 2004, the Public Service Commission ("PSC" or the "Commission") finds, determines, and Orders the following:

1. In PSC Order No. 4801 (June 9, 1998), the Commission granted NEXTLINK Delaware, Inc., a conditional Certificate of Public Convenience and Necessity ("CPCN") to allow it to provide local exchange and competitive intrastate telecommunications services within Delaware. NEXTLINK Delaware, Inc., completed its conditions, which included filing its bond, on December 1, 1998, and was permitted to commence business on that date. In PSC Docket 01-6T, NEXTLINK Delaware, Inc., changed its name to XO Delaware, Inc. ("XO"); and

2. Under Rule 4(f)(i) of the Commission's "Rules for the Provision of Telecommunications Services" (adopted by PSC Order No. 5833 (Nov. 6, 2001)),¹ a carrier seeking a CPCN to provide telecommunications services must post with the Commission a surety bond in the amount of Ten Thousand Dollars (\$10,000) to secure adequate performance of its regulatory obligations. In addition, under Rule 4(f)(ii) of the Telecommunications Rules, no carrier may require its customers to submit a deposit or prepay for its services unless such carrier posts a surety bond with the Commission to ensure return of such deposits or prepaid amounts in the event of the carrier's cessation of operations; and

3. Consistent with these Telecommunications Rules, Staff informed XO that it was required to file a surety bond in the amount of Fifty Thousand Dollars. Such bond amount represented the obligation of a prepayment guarantee of \$50,000 (Rule 4 (f)(ii)) for both local and competitive intrastate telecommunications services. On July 18, 2002, XO filed its \$50,000 surety bond with the Commission; and

4. In light of the financial hardship that the Rule 4(f) bonds have imposed on telecommunications carriers, Staff sent a letter to certificated local exchange companies explaining that any local exchange company that had filed a surety bond in the amount of Fifty or Sixty Thousand Dollars and, at this time, did not collect prepayments or deposits, could file a request to reduce its bond to the amount of Ten Thousand Dollars (\$10,000) representing the performance bond amount under Rule 4(f)(i). Because the carrier no longer seeks to collect deposits nor require prepayments for services, the provisions of the bonding requirements in Rule 4(f)(ii) would no longer be applicable; and

5. On February 25, 2004, XO filed an application requesting Commission approval to reduce its bond from Fifty Thousand Dollars (\$50,000) to Ten Thousand Dollars (\$10,000) because XO does not presently collect prepayments nor deposits from its customers. Staff recommends approval of such request; and

6. Based on the representations that XO no longer requires deposits nor prepayments that would trigger the additional bond requirements of Rule 4(f)(ii), the Commission grants XO's request to modify its bond obligation to only the Ten Thousand Dollar (\$10,000) performance bond required by Rule 4(f)(i) of the Telecommunications Rules.

¹Hereafter referred to as the "Telecommunications Rules."

Now, therefore, **IT IS ORDERED:**

1. That the Commission grants XO Delaware, Inc.'s request to reduce its bond from Fifty Thousand Dollars (\$50,000) to Ten Thousand Dollars (\$10,000) with such bond to conform with the requirements of Rule 4(f)(i) of the "Rules for the Provision of Telecommunications Services," adopted in PSC Order No. 5833 (Nov. 6, 2001).

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this proceeding as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary